

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA)	
)	Case No. 1:06CR00029
v.)	
)	OPINION AND ORDER
KIMBERLY ANN DRAKE,)	
)	By: James P. Jones
Defendant.)	Chief United States District Judge

On October 2, 2006, the court sentenced the defendant in connection with a crack cocaine conviction. In so doing, the court considered the advisory federal sentencing guidelines as required under 18 U.S.C. § 3553(a).

Pursuant to its statutory authority, the United States Sentencing Commission has amended the federal advisory sentencing guidelines applicable to criminal cases involving cocaine base or crack cocaine, effective November 1, 2007. On December 11, 2007, the Sentencing Commission further decided that, effective March 3, 2008, the amended guideline provisions will apply retroactively to offenders who were sentenced under prior versions of the sentencing guidelines, and who are still incarcerated. Stated generally, the practical effect of the Sentencing Commission's actions is that certain federal defendants convicted of offenses involving crack cocaine may be eligible for a reduction in their current sentences, pursuant to the provisions of 18 U.S.C. § 3582(c)(2).

On March 20, 2008, the court received a Motion to Reduce Sentence pursuant to § 3582(c)(2) from the defendant.

Having considered the defendant's Motion to Reduce Sentence, the court concludes that the motion must be denied. The defendant pled guilty to conspiring to distribute five grams or more of crack cocaine, in violation of 21 U.S.C. §§ 841(a) and 846. Pursuant to a plea agreement, the defendant was held responsible for at least 5 grams, but less than 20 grams, of crack cocaine. Under the amended sentencing guidelines, this is correlated with a base offense level of 24. After giving the defendant a three-level reduction for her acceptance of responsibility, her Total Offense Level is 21. With a Criminal History Category of III, the amended guidelines recommend a term of incarceration between 46 and 57 months. Congress, however, has mandated that offenses involving at least 5 grams of crack cocaine be punished by a minimum of 60 months incarceration. 21 U.S.C. § 841(b)(1)(B)(iii). Because the defendant has already been sentenced to the statutory mandatory minimum sentence of 60 months, this court lacks the authority to reduce her sentence.

Accordingly, it is **ORDERED** that the defendant's Motion to Reduce Sentence (Doc. No. 74) is **DENIED**.

The Clerk will send copies of this order to the defendant at her place of confinement and to the United States Attorney's Office.

ENTER: March 28, 2008

/s/ JAMES P. JONES
Chief United States District Judge